IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (STAMP) NO.29576 OF 2004

Mrs.Gurmeet Kaur J.Kohli ..Appellant
(Org.Respondent)

V/s.

Mr.Jatinder Pal Singh Kohli ..Respondent
(Org.Petitioner)

Ms.Vasanti Bangera for the appellant.

Ms.Vaneeta Kakar for the Respondent.

Coram : H.L.Gokhale &
R.S.Mohite,JJ

Date : 29.11.2004.

PC

1. Heard Ms.Bangera for the appellant. Ms.Vaneeta Kakar appears for the respondent. The appellant as well as the respondent are also present in Court. The appeal seeks to challenge the order passed by the Principal Judge, Family Court on 28.10.2004 on a Petition No.A-1887 of 1995 filed by the Respondent. The impugned Judgment and order allows this Petition to be converted into a Petition by mutual consent under Section 13-B of the Hindu Marriage Act 1955. The order records in paragraph-3 that both the parties have now agreed to take divorce by mutual consent and have made an oral request accordingly. The impugned Judgment and order therefore, dissolves

the marriage between the parties by consent. Learned Counsel for the appellant submitted that the appellant had never consented for dissolution of the marriage. She has drawn our attention to an application given in writing to the learned Judge on the same day immediately after coming to know that the learned Judge has passed an order dissolving the marriage by consent. Ms.Bangera for the appellant submits that the order therefore, is without the basic requirements expected under the said Section and ought to be set aside.

2. Learned Counsel Ms.Kakar for the respondent-husband disputes the submission made by Ms.Bangera learned Counsel for the appellant. She however, states on instructions that the respondent has no objection to the order being set aside. She however, makes a request that since the petition is pending for last more than 10 years, the same may be heard early.

3. In the circumstances, by consent of both the parties, appeal is admitted and taken up for hearing finally, again by consent of both the Lawyers who are instructed by their clients who are present in court. The impugned order and Judgment is set aside. Petition No.A-1887 of 1995 will stand restored to the file of the Family court. We request the learned Judge who has passed the order

and who is also the Principal Judge of the Family court to assign the matter to some other Judge. The learned Judge to whom the matter is assigned is expected to hear and decide the revived proceeding at the earliest and preferably by the end of June-2005. Appeal stands disposed of in the above terms with no order as to costs.

4. Before we part with the matter, we would like to note that Section 13-B of the Hindu Marriage Act 1955 speaks of a petition for dissolution of the marriage by a decree of divorce being presented to the Court by both the parties. It implies that it has got to be in writing either by way of original Petition or by way of an amendment of the petition which has already been filed.

(H.L.Gokhale,J)

(R.S.Mohite,J)